

MAY 08 2009

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

MUR: 6120

DATE COMPLAINT FILED: October 29, 2008

DATE OF NOTIFICATION: November 5, 2008

LAST RESPONSE RECEIVED:

December 10, 2008

DATE ACTIVATED: January 26, 2009

**EXPIRATION OF SOL: October 14, 2013
(earliest), October 15, 2013 (latest)**

COMPLAINANT:

**Brian S. Colón, Chairman
Democratic Party of New Mexico**

RESPONDENTS:

**Darren White
Darren White for Congress and Angie McKinstry,
in her official capacity as treasurer
Republican Campaign Committee of New Mexico
and John Chavez, in his official capacity as
treasurer
Freedom's Watch, Inc.**

**RELEVANT STATUTES
AND REGULATIONS:**

**2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 433
2 U.S.C. § 434(b)
11 C.F.R. § 100.26
11 C.F.R. § 109.37
11 C.F.R. § 109.21**

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

The complaint alleges several violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), stemming from two television advertisements, "Can't Trust" and "Asked to Explain," criticizing Martin Heinrich, a candidate for U.S. House of Representatives in New Mexico's First Congressional District. Specifically, the complaint alleges that "Can't Trust," reported as an independent expenditure by the Republican Campaign Committee of New Mexico ("RCCNM"), was coordinated with Darren White and Darren White for Congress ("White Committee"), Martin Heinrich's opponent, resulting in an excessive contribution. Complaint at 3. The complaint further alleges that "Asked to Explain," reported as an electioneering communication by Freedom's Watch, Inc. ("Freedom's Watch"), a nonprofit corporation, was coordinated with the RCCNM, resulting in an excessive and prohibited contribution. *Id.* at 4. Based on the coordination allegations, the complaint also alleges that Freedom's Watch failed to register as a political committee with the Commission and that the White Committee, RCCNM, and Freedom's Watch may have failed to properly report coordinated communications to the Commission. *Id.* The responses from Darren White, the RCCNM and Freedom's Watch deny any coordination.

As discussed in more detail below, it appears that neither "Can't Trust" nor "Asked to Explain" were coordinated communications because neither meet the conduct prong of the Commission's coordinated communications regulations. Therefore, we recommend the Commission find no reason to believe that the RCCNM or Freedom's Watch made excessive contributions in violation of 2 U.S.C. § 441a(a), no reason to believe that Darren White, the White Committee, or the RCCNM accepted excessive contributions in violation of 2 U.S.C. § 441a(f), and no reason to believe that Freedom's Watch made or the RCCNM accepted,

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1 prohibited contributions in violation of 2 U.S.C. § 441b(a). We further recommend the
2 Commission find no reason to believe that Freedom's Watch failed to register as a political
3 committee in violation of 2 U.S.C. § 433, and no reason to believe that RCCNM, the White
4 Committee, and Freedom's Watch failed to properly report coordinated communications in
5 violation of 2 U.S.C. § 434(b), and close the file.

6 **II. FACTUAL SUMMARY**

7 "Can't Trust" began airing on October 14, 2008, on New Mexico television stations. The
8 advertisement features images of candidate Martin Heinrich and states "[w]e just can't trust
9 Martin Heinrich." The advertisement further claims that "it's a disgrace" that Heinrich smeared
10 his opponent, a former soldier, and discusses Heinrich's stance on issues related to troops in
11 Iraq.¹ The RCCNM disclosed to the Commission on its 2008 Pre-General Report that it made
12 disbursements of \$240,000 and \$100,000 on October 14 and 15, 2008, respectively, to Stevens,
13 Reed, Curcio & Potholm ("SRCP"), the media firm that created "Can't Trust," for independent
14 expenditures that oppose Martin Heinrich's candidacy.

15 The complaint's allegation that the RCCNM coordinated with Darren White and the
16 White Committee in producing "Can't Trust" is based on White's New Mexico Republican Party
17 ("NMRP") Executive Committee membership. Complaint at 4. It asserts that as a result of this
18 affiliation, the RCCNM, the federal committee of the NMRP, would not have aired an
19 advertisement without assent, material involvement of, or substantial discussion with, White or
20 one of his agents. *Id.* Attached to the complaint is a list of the thirty-nine NMRP Executive
21 Committee members, including White. *Id.*, Attachment 1. The complaint alleges that because of

¹ "Can't Trust" is available at <http://www.youtube.com/watch?v=wwbCSqRYEdQ>.

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1 the purported coordination, RCCNM made, and White and the White Committee accepted, an
2 excessive, in-kind contribution. *Id.*

3 The responses from both White and the RCCNM deny any coordination related to "Can't
4 Trust." Darren White asserts that the complaint assumes coordination based only on his
5 involvement in the NMRP Executive Committee. White Response at 2. White maintains,
6 however, that the NMRP Executive Committee has not had a meeting since December 2007,
7 well over a year before the advertisement aired, and that White did not attend that meeting. *Id.*
8 In its response, the RCCNM also denies any coordination, and in support, states that RCCNM
9 hired an independent consultant, Ben Burger at SRCP, to run its independent expenditure
10 program separately from the RCCNM. RCCNM Response at 3. Burger avers in an attached
11 affidavit that he hired his own staff, designed the ads, hired and supervised the media consultants
12 who bought the time and filmed the ads, and supervised the selection of the stations and
13 broadcast times for the ad. Burger Aff. ¶ 4. RCCNM additionally asserts that it maintained a
14 firewall to prevent coordination with White and the White Committee. *Id.* According to the
15 RCCNM, the firewall strictly prohibited Burger and his staff from contacting or receiving
16 information not publicly available from any of the benefiting campaigns or their agents about
17 any aspect of the campaigns' strategy or political advertising. *Id.* Only RCCNM's legal counsel
18 was authorized to contact Burger for legal compliance purposes. *Id.*

19 "Asked to Explain" began airing on October 15, 2008, on New Mexico television
20 stations. The advertisement features images of Heinrich and states that he "skirted" ethics laws
21 while on the city council and as a lobbyist. It instructs viewers to call Heinrich and ask him to
22 support the State Ethics Commission Act.² On FEC Form 9, 24 Hour Notice of Disbursements

² "Asked to Explain" is available at <http://www.youtube.com/watch?v=g10erG7DJhc&NR=1>.

1 for Electioneering Communications, dated October 15, 2008, Freedom's Watch disclosed that it
2 disbursed \$9,997 on October 10, 2008, to SRCP for "media production" of "Asked to Explain."
3 The complaint alleges that "Asked to Explain" was a coordinated communication because both
4 Freedom's Watch and the RCCNM used the same vendor, SRCP, to produce television
5 advertisements criticizing Martin Heinrich; both advertisements used the same two images of
6 Heinrich; and because Carl Forti, a former National Republican Congressional Committee
7 ("NRCC") employee, is now a Freedom's Watch employee. As a result of the coordination, the
8 complaint alleges, Freedom's Watch made, and the RCCNM accepted, an excessive and
9 prohibited in-kind contribution. *Id.*

10 The responses from Freedom's Watch and the RCCNM deny any coordination related to
11 "Asked to Explain." Freedom's Watch asserts that while SRCP worked for both Freedom's
12 Watch and RCCNM, SRCP followed a strict firewall policy compliant with the Commission's
13 guidance. Freedom's Watch Response at 1. Paul Curcio, the SRCP partner who assisted
14 Freedom's Watch in creating "Asked to Explain," avers, in an affidavit attached to Freedom's
15 Watch's response, that he adhered to the firewall policy and did not work on RCCNM's "Can't
16 Trust," or even know of its existence, until it aired publicly, despite it being produced by his
17 firm. Curcio Aff. ¶ 4. Curcio further avers that he had no communication with the RCCNM or
18 his partner Ben Burger regarding "Asked to Explain." *Id.* In addition, he avers that he
19 personally found the photographs of Martin Heinrich used in "Asked to Explain" from an
20 independent internet search and did not share them. *Id.* ¶ 8. Finally, Freedom's Watch's
21 response states that while Carl Forti, Freedom's Watch's Executive Vice President of Issue
22 Advocacy, was a former senior NRCC employee, he ended his work at the NRCC on
23 December 31, 2006, well before the 120-day window in the Commission's regulations within

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1 which communications are considered coordinated when paid for by a former employer.
2 Freedom's Watch Response at 2; *see* 11 C.F.R. § 109.21(d)(5).

3 The RCCNM also denies any coordination with Freedom's Watch, stating that the
4 firewalled independent expenditure program used to produce "Can't Trust," also protected it
5 from coordination with Freedom's Watch in "Asked to Explain." RCCNM Response at 4. Ben
6 Burger avers that "[a]t no time while I was employed by RCCNM did I share any information
7 with any agents or employees of Freedom's Watch...." Burger Aff. ¶ 8. He also states that he
8 did not witness any other information sharing between RCCNM and Freedom's Watch. *Id.*
9 Finally, he stated that the image of Martin Heinrich that appeared in the "Asked to Explain"
10 advertisement and the "Can't Trust" advertisement was obtained from a Google search of
11 publicly available information. *Id.* ¶ 7.

12 On the assumption that there was coordination between Freedom's Watch and RCCNM,
13 the complaint also alleges that Freedom's Watch made expenditures in excess of \$10,000 but
14 failed to register as a political committee with the Commission. Finally, the complaint alleges
15 that the White Committee, RCCNM, and Freedom's Watch may have failed to properly report
16 their alleged coordinated communications to the Commission. Complaint at 4. The respondents
17 deny these allegations because they maintain that there was no coordination in conjunction with
18 "Can't Trust" or "Asked to Explain."

19 **III. LEGAL ANALYSIS**

20 **A. Coordination**

21 The two central issues in this matter are whether the RCCNM's advertisement, "Can't
22 Trust," was coordinated with Darren White or the White Committee resulting in an excessive
23 contribution and whether Freedom's Watch's advertisement, "Asked to Explain," was

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1 coordinated with RCCNM, resulting in an excessive and prohibited contribution. The Act
2 provides that coordinated communications, those made by any person "in cooperation,
3 consultation, or concert, with or at the request or suggestion of," a candidate, the candidate's
4 authorized political committee, or of a state committee of a political party, are considered a
5 contribution to that candidate or committee. 2 U.S.C. § 441a(a)(7)(B)(i) and (ii), 11 C.F.R.
6 § 109.21(b)(1). As described in more detail below, it appears that neither "Can't Trust" nor
7 "Asked to Explain" were coordinated communications, and, therefore, neither advertisement
8 constituted a contribution.³

9 1. "Can't Trust"

10 Under the Commission's regulations, a political party communication is coordinated with
11 a candidate, a candidate's authorized committee, or agent of the candidate and therefore
12 constitutes an expenditure on behalf of the candidate, when the communication satisfies the
13 three-pronged test set forth in 11 C.F.R. § 109.37: (1) the communication is paid for by a
14 political party committee or its agent; (2) the communication satisfies at least one of the content
15 standards set forth in 11 C.F.R. § 109.37(a)(2); and (3) the communication satisfies at least one
16 of the conduct standards set forth in 11 C.F.R. § 109.21(d).

17 "Can't Trust" satisfies the first prong of the political party coordinated communications
18 test because the RCCNM paid for "Can't Trust." It also meets the content prong because the
19 television advertisement was a public communication that referred to candidate Martin Heinrich,

³ The U.S. District Court for the District of Columbia held that the Commission's revisions of the content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not enjoin the Commission from enforcing the regulations. See *Shays v. F.E.C.*, 508 F. Supp. 2d 10 (D.D.C. 2007) (granting in part and denying in part the respective parties' motions for summary judgment). The D.C. Circuit affirmed the district court with respect to, *inter alia*, the current standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. F.E.C.*, 528 F.3d 914 (D.C. Cir. 2008).

1 and was publicly disseminated in Heinrich's jurisdiction on or around October 14, 2008, fewer
2 than 90 days before the November 4, 2008, general election. See 11 C.F.R. § 109.37(a)(2), see
3 also 11 C.F.R. § 100.26 (a "public communication" includes "a communication by means of any
4 broadcast, cable, or satellite communication").

5 While "Can't Trust" meets the first and second prongs of the coordination test, it does not
6 meet the conduct prong. The third prong requires one of six types of conduct to occur: (1) the
7 communication is "created, produced, or distributed at the request or suggestion of a candidate or
8 an authorized committee," or the communication is created, produced, or distributed at the
9 suggestion of the payor and the candidate or authorized committee assents to the suggestion;
10 (2) the candidate, his or her committee, or their agent is materially involved in the content,
11 intended audience, means or mode of communication, the specific media outlet used, or the
12 timing or frequency of the communication; (3) the communication is created, produced, or
13 distributed after at least one substantial discussion about the communication between the person
14 paying for the communication or that person's employees or agents, and the candidate or his or
15 her authorized committee, his or her opponent or opponent's authorized committee, a political
16 party committee, or any of their agents; (4) a common vendor uses or conveys information
17 material to the creation, production, or distribution of the communication; (5) a former employee
18 or independent contractor uses or conveys information material to the creation, production, or
19 distribution of the communication; and (6) the dissemination, distribution, or republication of
20 campaign materials. 11 C.F.R. § 109.21(d).

21 White's membership on the Executive Committee of the NMRP is the sole basis for the
22 complaint's allegation that White and the White Committee coordinated "Can't Trust" with the
23 RCCNM, the NMRP's federal committee. Complaint at 4. However, in his response, White

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1 denies any coordination between himself and the RCCNM, and maintains that he had no part in
2 creating nor did he assent to the creation and airing of "Can't Trust." We have no evidence to
3 the contrary, and no information that any of the other conduct standards have been met. See
4 MUR 5754 (MoveOn.org Voter Fund)(finding no reason to believe coordination between
5 MoveOn.org and John Kerry for President Inc. had occurred because there was no specific
6 information that suggested the conduct prong had been triggered). Based on the foregoing
7 analysis, the conduct prong is not satisfied, and, therefore, "Can't Trust" is not a coordinated
8 communication.

9 **2. "Asked to Explain"**

10 Under the Commission's regulations, a communication is coordinated with a political
11 party committee or an agent of the committee and therefore constitutes an expenditure on behalf
12 of the political party committee, when the communication satisfies the three-pronged test set
13 forth in 11 C.F.R. § 109.21: (1) the communication is paid for, in whole or in part, by a person
14 other than that political party committee; (2) the communication satisfies at least one of the
15 content standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least
16 one of the conduct standards set forth in 11 C.F.R. § 109.21(d). See discussion *supra* pp. 7-8.

17 "Asked to Explain" satisfies the first prong because Freedom's Watch paid for the
18 advertisement. It also satisfies the content prong because "Asked to Explain," a television
19 advertisement, was a public communication that refers to a clearly identified House candidate,
20 Martin Heinrich, and was publicly disseminated in Heinrich's jurisdiction on or around October
21 15, 2008, fewer than 90 days before the November 4, 2008, general election. See 11 C.F.R.
22 § 100.26.

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1 The complaint alleges that Freedom's Watch and RCCNM met the conduct prong with
2 respect to "Asked to Explain" in three ways. First, the complaint alleges that the same two
3 images of Martin Heinrich appeared in both RCCNM's advertisement, "Can't Trust" and in
4 Freedom's Watch's advertisement, "Asked to Explain." Second, the complaint alleges that the
5 conduct prong was met because a common vendor, SRCP, used material information in the
6 RCCNM advertisement and then used the same information in the Freedom's Watch
7 advertisement. Third, the complaint alleges that the conduct prong was met because Freedom's
8 Watch is run by a former NRCC employee. The available information does not support the
9 complaint's allegations.

10 First, regarding the common images of Heinrich, it appears that the safe harbor for
11 information from publicly available sources protects both RCCNM and Freedom's Watch. The
12 Commission's regulations specifically state that the conduct prong is not satisfied "if the
13 creation, production, or distribution of the communication was obtained from a publicly
14 available source." 11 C.F.R. § 109.21(d)(2)-(5), *see also Coordinated Communications*, 71 Fed.
15 Reg. 33190, 33205 (June 8, 2006). Ben Burger, producer of "Can't Trust" avers that the "image
16 of Martin Heinrich that appeared in the 'Asked to Explain' advertisement and the 'Can't Trust'
17 advertisement was obtained from a public source (internet image search using GOOGLE)."
18 Burger Aff. ¶ 7. Similarly, Paul Curcio, producer of "Asked to Explain" avers that he "identified
19 the image of Martin Heinrich used in 'Asked to Explain' by conducting an internet search of
20 images from the public domain and gathered that image for use in 'Asked to Explain' from a
21 publicly available source." Curcio Aff. ¶ 8. We were able to locate one of the Heinrich images
22 used in the advertisements through a Google image search; our inability to locate the other is not
23 dispositive because Google image searches locate images posted online, which may be removed.

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1 Thus, based on the affidavits of Burger and Curcio, it appears that both RCCNM's and
2 Freedom's Watch's use of the same two images falls under the safe harbor for information from
3 publicly available sources, and does not meet the conduct standard.

4 Moreover, the use of the same images of Martin Heinrich in both advertisements does not
5 meet the conduct prong because it appears that the Commission's safe harbor for establishment
6 and use of a firewall was applicable. *See* 11 C.F.R. § 109.21(h), *see also Coordinated*
7 *Communications*, 72 Fed. Reg. 33190, 33207. In their responses, Freedom's Watch and
8 RCCNM showed that SRCP and Freedom's Watch had designed and implemented effective
9 firewalls that prohibited the flow of information between employees providing services to
10 Freedom's Watch and those employees providing services to the RCCNM. Freedom's Watch
11 attached to its response a copy of SRCP's firewall policy, signed by Paul Curcio on August 20,
12 2008, as well as an affidavit from Curcio, which demonstrated how SRCP's firewall was
13 designed and implemented. Curcio, who worked on "Asked to Explain," averred that as a result
14 of the policy, he had no knowledge that Ben Burger, his SRCP colleague, had been engaged by
15 RCCNM to create "Can't Trust," until he saw the broadcasts. Curcio Aff. ¶ 4. Curcio further
16 averred that he had no communication regarding the advertisements with Ben Burger. *Id.*

17 Attached to the RCCNM's response are affidavits from Ben Burger and Matthew
18 Kenicott, former Executive Director of the RPNM, which further describe the SRCP firewall.
19 Ben Burger averred that he and his SRCP employees were strictly prohibited from contacting or
20 receiving any information not publicly available from any of the benefitting campaigns,
21 including the RCCNM and Freedom's Watch. Burger Aff. ¶ 5. The RCCNM further restricted
22 Burger's communications by only allowing RCCNM's legal counsel to contact Burger, in an
23 effort to ensure that RCCNM staff who could have had any contact with any political candidate

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1 or campaign did not share information with Burger. Burger Aff. ¶ 6, Kenicott Aff. ¶ 6. In
2 addition, Freedom's Watch attached its own vendor firewall policy to its response. The policy,
3 signed by Paul Curcio on July 17, 2008, states that each "FW vendor is prohibited from
4 discussing the FW issue advocacy program with a...political party committee." Freedom's
5 Watch Policy at 1.

6 Thus, based on the public availability and firewall safe harbors, the two images of
7 Heinrich used in both advertisements do not appear to meet the conduct standard. See MUR
8 5743 (Sutton) (identical photographs used in direct mailers and on Congresswoman's website did
9 not satisfy the conduct prong because affidavits stated that there was no coordination, the images
10 were from a publicly available source, and a firewall was in place).

11 Second, the use of a common vendor, in and of itself, has not been found by the
12 Commission to be sufficient to meet the conduct prong of the coordination test. See MUR 6050
13 (Borwell) (Commission found that merely having a common vendor without more is not
14 sufficient to establish coordination). The Commission's regulations require three elements, in
15 relevant part, for a common vendor to satisfy the conduct prong: (1) the person paying for the
16 communication employed a commercial vendor, as defined in section 116.1, to create, produce
17 or distribute the communication; (2) the commercial vendor developed a media strategy,
18 developed the content of, and produced, a public communication, and selected personnel to
19 provide the services to a political party committee within the past 120 days; and (3) the
20 commercial vendor used or conveyed to the person paying for the communication, information
21 about the political party committee that is material to the creation, production, or distribution of
22 the communication. 11 C.F.R. § 109.21(d)(4)(i)-(iii).

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1 SRCP's relationship with Freedom's Watch and with the RCCNM appears to satisfy only
2 the first two of the three common vendor elements. The first requirement is fulfilled because
3 Freedom's Watch, the payor for "Asked to Explain," contracted with SRCP, a commercial
4 vendor, to create, produce and distribute the advertisement. Curcio Aff. ¶ 1, *see* 11 C.F.R.
5 § 116.1(c). The second element is met because SRCP provided creative and strategic services to
6 the RCCNM during the same time-period it was providing similar services to Freedom's Watch.

7 The third common vendor element is not met, however, because there is no information
8 suggesting that SRCP used or conveyed material information about RCCNM or "Can't Trust" to
9 Freedom's Watch. The complaint only states the use of a mutual vendor "further suggests"
10 information sharing, but does not indicate what information, other than the identical pictures of
11 Heinrich discussed *supra*, was actually shared. In fact, the substance of "Can't Trust" deals with
12 an entirely different issue than "Asked to Explain." The only similarity is the two images that
13 appear in both advertisements. *See* Complaint, Attachment 4. In addition, even if the common
14 vendor elements were met, the firewall described *supra* would have further prevented
15 information sharing. *See* 11 C.F.R. § 109.21(h). Therefore, it does not appear that the mutual
16 use of SRCP as a vendor for the production of "Can't Trust" and "Asked to Explain" satisfies the
17 conduct prong.

18 Finally, the complaint alleges that the conduct prong is met because a former NRCC
19 employee is now a Freedom's Watch employee. For a former employee to satisfy the conduct
20 prong, the Commission's regulations require, in relevant part, that: (1) a communication is paid
21 for by the employer of a person who was an employee of a political party committee, during the
22 previous 120 days; and (2) that the former employee uses or conveys to the person paying for the
23 communication information about the political party committee, or information used by the

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1 former employee in providing services to the political party committee, and the information
2 conveyed is material to the creation, production, or distribution of the communication. 11 C.F.R.
3 § 109.21(d)(5).

4 Freedom's Watch's response acknowledges that Carl Forti, Freedom Watch's Executive
5 Vice President of Issue Advocacy, previously worked at the NRCC, but states that Forti ended
6 his NRCC employment on December 31, 2006. Freedom's Watch Response at 2-3. Forti
7 became Freedom's Watch's Executive Vice President in March 2008. *Id.* Since Forti was not
8 employed by the NRCC, or the RCCNM, within 120 days of his employment at Freedom's
9 Watch, the first requirement is not satisfied. Further, the complaint provides no information
10 otherwise indicating that Forti conveyed information to Freedom's Watch that was material to
11 the RCCNM or that it was used in "Asked to Explain," to fulfill the second requirement. Based
12 on the foregoing analysis, the conduct prong is not satisfied, and therefore "Asked to Explain" is
13 not a coordinated communication.

14 3. Conclusion

15 Since neither "Can't Trust" nor "Asked to Explain" were coordinated communications
16 under the Commission's regulations, neither advertisement was an in-kind contribution.
17 Therefore, we recommend the Commission find no reason to believe that Republican Campaign
18 Committee of New Mexico and John Chavez, in his official capacity as treasurer, made an
19 excessive contribution in violation of 2 U.S.C. § 441a(a) and, no reason to believe that Darren
20 White or Darren White for Congress and Angie McKinstry, in her official capacity as treasurer,
21 accepted an excessive contribution in violation of 2 U.S.C. § 441a(f) in connection with "Can't

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1 Trust.”⁴ We further recommend the Commission find no reason to believe that Freedom’s
2 Watch, Inc. made an excessive or prohibited contribution to the Republican Campaign
3 Committee of New Mexico in violation of 2 U.S.C. § 441a(a)(1) and 2 U.S.C. § 441b(a), and no
4 reason to believe that the Republican Campaign Committee of New Mexico accepted an
5 excessive or prohibited contribution in violation of 2 U.S.C. § 441a(f) and 2 U.S.C. § 441b(a) in
6 connection with “Asked to Explain.”

7 **B. Registration and Reporting**

8 The remaining allegations, that Freedom’s Watch failed to register as a political
9 committee with the Commission and that RCCNM, Freedom’s Watch, and the White Committee
10 failed to properly report coordination to the Commission, are based on the complaint’s
11 coordination allegations. Since it appears that “Can’t Trust” and “Asked to Explain” were not
12 coordinated communications, we recommend the Commission find no reason to believe that
13 Freedom’s Watch, Inc. failed to register as a political committee in violation of 2 U.S.C. § 433,
14 and no reason to believe that the Republican Campaign Committee of New Mexico and John
15 Chavez, in his official capacity as treasurer, Darren White for Congress and Angie McKinstry, in
16 her official capacity as treasurer, and Freedom’s Watch, Inc., failed to properly report
17 coordinated communications to the Commission in violation of 2 U.S.C. § 434(b).

18 **IV. RECOMMENDATIONS**

- 19 1. Find no reason to believe that the Republican Campaign Committee of New
20 Mexico and John Chavez, in his official capacity as treasurer, violated 2 U.S.C.
21 § 441a(a);
22
23 2. Find no reason to believe that the Freedom’s Watch, Inc. violated 2 U.S.C.
24 § 441a(a);
25

⁴ The only allegation involving Darren White for Congress and Angie McKinstry, in her official capacity as treasurer, is based on the alleged acts of the candidate, as the Committee’s agent. Since the candidate did not engage in coordination, neither did the Committee.


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3. Find no reason to believe that Darren White, Darren White for Congress and Angie McKinstry, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f);
4. Find no reason to believe that the Republican Campaign Committee of New Mexico and John Chavez, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f);
5. Find no reason to believe that the Republican Campaign Committee of New Mexico and John Chavez, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a);
6. Find no reason to believe that Freedom's Watch, Inc. violated 2 U.S.C. § 441b(a);
7. Find no reason to believe that Freedom's Watch, Inc. violated 2 U.S.C. § 433;
8. Find no reason to believe that the Republican Campaign Committee of New Mexico and John Chavez, in his official capacity as treasurer, violated 2 U.S.C. § 434(b);
9. Find no reason to believe that Darren White for Congress and Angie McKinstry, in her official capacity as treasurer, violated 2 U.S.C. § 434(b);
10. Find no reason to believe that Freedom's Watch, Inc. violated 2 U.S.C. § 434(b);
11. Approve the attached Factual and Legal Analyses;
12. Approve the appropriate letters; and
13. Close the file.

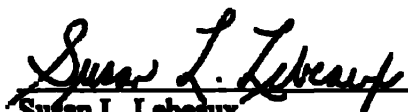
Thomasenia P. Duncan
General Counsel

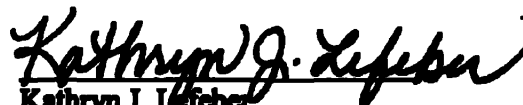
5/6/09

Date

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